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UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1989

Addendum

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND*

[15 March 1991]

THIRD PERIODIC REPORT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND: SUPPLEMENTARY REPORT ON THE DEPENDENT TERRITORIES, PART III, SECTION F: HONG KONG: AN UPDATE

Introduction

1. The supplementary report of the United Kingdom on its dependent Territories covers the period up to October 1989. It does not include recent important developments that concern the International Covenant on Civil and Political Rights (the Covenant) as it is applied to Hong Kong including the introduction into the legislature of a Bill of Rights. The supplementary report was also written before the promulgation of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China ("the Basic Law").

2. Part I(A) of the present report sets out some general information relating to these developments and deals with some of the factors that have had a special bearing on the form and content of the Hong Kong Bill of Rights Bill ("the Bill of Rights"). Part I(B) describes in detail the Bill of Rights Bill 1990. Part II outlines recent legislative, administrative and other developments concerning the provisions of individual articles of the Covenant.

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* The present document contains additional information submitted by the Government of the United Kingdom relating to Hong Kong.

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Part I(A)

3. Paragraphs 1-9 of section F in part III of the supplementary report on the dependent Territories (CCPR/C/58/Add.6) describe the existing safeguards for protecting human rights in Hong Kong and the arrangements under the Joint Declaration for the protection of human rights after 1997. These include a description of the provision in the Sino-British Joint Declaration, which says that the provisions of the Covenant as applied to Hong Kong shall remain in force after 1997. These paragraphs also describe the provisions in the then draft Basic Law which relate to the Covenant. Paragraphs 10-12 provide the background on the preparation of a bill of rights in Hong Kong.

The Basic Law

4. The Basic Law was adopted by the Seventh National People's Congress of the People's Republic of China at its third session on 4 April 1990 and was promulgated under Decree No. 26 by the President of the People's Republic of China on the same day. It will come into effect on 1 July 1997. The Basic Law will be the primary constitutional document for Hong Kong, which will become on 1 July 1997 a Special Administrative Region of the People's Republic of China. Chapter III ("Fundamental rights and duties of the residents") of the Basic Law is the principal domestic safeguard for the protection of human rights for the residents of Hong Kong after 1997. It consists of 19 articles, which guarantee a variety of civil, political, economic, social and cultural rights. Article 39 provides that:

> "The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.
>
> "The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article."

5. This article reflects the provision in the Sino-British Joint Declaration that the provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong shall continue in force after 1 July 1997.

The Hong Kong Bill of Rights Bill

6. Following the announcement by the Governor of Hong Kong in October 1989 that a bill of rights would be introduced into the Legislative Council by July 1990, the Hong Kong Administration published in March 1990 a draft of the Bill of Rights Bill for public consultation in a publication entitled "Commentary on the draft Hong Kong Bill of Rights ordinance". The text of this publication was in English and Chinese. Over 19,000 copies were distributed.

7. The draft Bill was in the form of an ordinance which makes justiciable the right and freedoms contained in the International Covenant on Civil and Political Rights as applied to Hong Kong.

8. The publication of the draft Bill stimulated public discussion on the issue of implementation of the Covenant in Hong Kong. Over 800 submissions on the form and content of the draft Bill were received by the Secretary for Constitutional Affairs by the closing date for submissions on 6 June 1990. Nearly all of the submissions supported the principle of a Bill of Rights for Hong Kong and the direct incorporation by one instrument into the legal system of the relevant provisions of the Covenant.

9. As a result of the submissions, the text of the draft Bill of Rights was amended in several aspects. On 25 July 1990 the Chief Secretary introduced the Hong Kong Bill of Rights Bill 1990 into the Legislative Council. The Chief Secretary announced on the same occasion that it was the intention of the Hong Kong Administration to seek an amendment to Hong Kong's primary constitutional document, the Letters Patent, so as to ensure that no future legislature that derived its competence from the Letters Patent could validly enact any law that was inconsistent with the International Covenant on Civil and Political Rights as applied to Hong Kong.

Part I(B). Further information on the form and content of the Bill of Rights

The Bill of Rights Bill

10. The Hong Kong Bill of Rights Bill reproduces the text of the International Covenant on Civil and Political Rights as applied to Hong Kong, save for minor adaptations to the text to make local sense. The text is in English and Chinese. The following sections are intended to give a general description of the form and content of the Bill of Rights as introduced to the Hong Kong Legislative Council on 25 July 1990. The Bill is being closely studied by the Legislative Council and further changes may be made during the rest of its passage through the legislature.

(i) Part I. Preliminary

11. Part I of the Bill of Rights Bill is entitled "Preliminary" and contains provisions relating to the commencement, interpretation, scope of application, effect, remedies and jurisdiction of the courts, and the conditions under which derogation from the rights guaranteed in the Bill of Rights is permitted.

12. The interpretation clause provides, inter alia, that nothing in the ordinance shall be interpreted as implying any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized in it; nor can there be any restrictions or derogations from existing human rights on the pretext that the Bill of Rights does not recognize them or that it recognizes them to a lesser extent (article 5, International Covenant on Civil and Political Rights).

13. Any parts of the common law and any pre-existing legislation that cannot be construed in a way that is consistent with the International Covenant on Civil and Political Rights as reflected in the Bill of Rights will be repealed by the Bill of Rights. If the Bill is enacted as presently drafted, future legislation will be interpreted, if it is possible to do so, in a way that is consistent with the Bill of Rights.

14. In time of public emergency that threatens the life of the nation and that has been officially proclaimed, measures can be taken that derogate from the Bill of Rights. But such measures must be such as are strictly required by the exigencies of the situation and must not be inconsistent with other obligations under international law that apply to Hong Kong, must not discriminate on grounds of race, colour, sex, language, religion or social origin and must not derogate from other specified rights (article 4, International Covenant on Civil and Political Rights).

15. Courts and tribunals in Hong Kong are vested with a broad discretionary power to grant such remedy or other relief as is within the court's or tribunals' jurisdiction in respect of a violation or threatened violation of the Bill of Rights and as seems appropriate and just in the circumstances of the particular case.

16. Clause 7 provides that except in relation to matters arising under article 14 of the Bill of Rights (privacy) (see para. 17 below), the Bill of Rights will, if enacted as presently drafted, bind the Government of Hong Kong and all authorities and all persons whether acting in a public or private capacity.

17. In the light of public comments received during the public consultation process, the Hong Kong Administration has accepted that the right to privacy should primarily be provided for by way of detailed legislation that would more precisely define the content of the right and thus provide for greater certainty in commercial conduct. Given that the Law Reform Commission is already well advanced with its comprehensive study of the subject (see paras. 64-68 below), the Hong Kong Government has decided that article 14 should not be binding on private persons for the time being.

(ii) Part II. The Hong Kong Bill of Rights

18. Part II of the Hong Kong Bill of Rights Bill is entitled "The Hong Kong Bill of Rights". It is closely based on the International Covenant on Civil and Political Rights as applied to Hong Kong, and takes into account some of the existing reservations and declarations of the United Kingdom and the fact that Hong Kong does not have the status of a State party to the Covenant and is not a sovereign State.

(iii) Part III. Exceptions and savings

19. Part III of the Hong Kong Bill of Rights Bill is entitled "Exceptions and savings". Clauses 9-13 reflect the reservations and declarations that the United Kingdom entered specifically in respect of Hong Kong or that otherwise apply to Hong Kong. The rights and freedoms guaranteed under part II of the Bill are subject to these provisions.

20. Clause 14 has the effect of saving from automatic repeal by the Bill pre-existing legislation for a period of at least one year. It also provides that the Bill of Rights does not affect any act done under pre-existing legislation during that period. The purpose of this clause is to give the Government some time to review further existing laws, particularly those that were enacted before the

International Covenant on Civil and Political Rights was applied to Hong Kong, to ensure their compatibility with the Bill of Rights and, therefore, the International Covenant on Civil and Political Rights.

Part II. Other relevant developments relating to articles in parts I, II and III of the Covenant

21. The following paragraphs outline recent legislative, administrative and other developments concerning the provisions of individual articles since October 1989. Where there have been no new developments, no reference is made to the article in question.

Article 2

22. In preparation for the enactment of the Bill of Rights, a review of current legislation is being conducted to identify any inconsistencies with the Bill of Rights (and thus with the Covenant as applied to Hong Kong).

23. The Law Reform Commission has completed reviews of existing legislation in a number of areas that have a bearing on human rights issues, including loitering, laws governing homosexual conduct and bail. The Commission is currently examining laws relating to police powers of arrest and detention, search and seizure, illegitimacy and protection of privacy. Further details of these reviews and of the Government's response to the reports of the Commission are provided under the articles to which the various references relate.

Publicity and education

24. The Hong Kong section of the third periodic report (see CCPR/C/58/Add.6, part III.F) was tabled in the Hong Kong Legislative Council on 1 November 1989 after its submission to the Committee. Copies of it in both English (500 copies) and Chinese (1,000 copies) were distributed through the Government Information Services and placed in public libraries for the information of members of the public. This supplementary report will be distributed to the public in the same way, as well as being made available to interested non-governmental organizations as soon as it has been submitted to the Committee.

25. Additional copies of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in both English and Chinese were distributed in March 1990 at the same time as the consultative document on the Bill of Rights. The total number of copies of the two Covenants published was 20,000. Most copies were distributed to the public as well as to public libraries and all government departments.

26. The Attorney General's chambers has instituted a training programme for the more than 250 government legal officers. The programme is intended to introduce officers to human rights law (in particular the International Covenant on Civil and Political Rights), the interpretation of human rights treaties that are given effect in domestic law and comparative national and international material. Each officer will be provided with briefing materials, which include a copy of the

International Covenant on Civil and Political Rights and the general comments of the Committee. After the Bill of Rights enters into force, a programme of continuing education will keep officers up to date on developments in Hong Kong and elsewhere, including the jurisprudence of the Committee. Resources permitting, introductory training programmes of this kind will be extended to other areas of the Administration.

27. The Judicial Studies Board is at present endeavouring to make arrangements for a series of lectures to be provided for all professionally qualified judicial officers to familiarize them with the proposed legislation.

28. Other sections of the community are also taking steps to give publicity to the Bill of Rights. The University of Hong Kong held a public seminar on the draft Bill of Rights in 1990, the proceedings of which have been published. It is also taking steps to build up its human rights documentation and to provide a resource to the legal profession in the area of human rights. The University and the Law Society of Hong Kong are organizing a conference on the Bill of Rights to be held in June 1991, which will serve as an introduction to the Bill of Rights for lawyers in Hong Kong.

29. The Law Society and the Bar Association are the two professional associations of lawyers in Hong Kong. They have each established committees to monitor the legislative progress of the Bill of Rights and to promote awareness of human rights issues amongst members.

Article 3

30. (See the third periodic report, CCPR/C/58/Add.6, part III.F, para. 26; see also entry relating to article 26.) The question as to whether the Convention on the Elimination of All Forms of Discrimination against Women should be extended to Hong Kong continues to be under active and careful consideration. The Hong Kong Administration expects to complete its consideration of this question soon after the enactment of the Bill of Rights.

Article 6

31. While the death penalty remains on the statute book, no death sentence has been carried out in Hong Kong since November 1966 (see CCPR/C/58/Add.6, part III.F, paras. 31 and 32). In January 1990, a survey was conducted on 44,000 respondents on, inter alia, their attitude towards the death penalty. The result showed that 50 per cent of the respondents considered that the death penalty should not be abolished, 30 per cent thought that it should and 20 per cent had no opinion.

32. The question was debated in the House of Lords on 29 November 1990. The Earl of Caithness, Minister of State with special responsibility for Hong Kong, reiterated the fact that there had been no executions since 1966 and pointed out that this issue would be resolved within the Territory if and when the time was right, and that for the time being the British Government had no intention of imposing a resolution from outside.

Article 7

33. (See CCPR/C/58/Add.6, part III.F, para. 34.) The United Kingdom Government intends to extend the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment to Hong Kong. Once the Bill of Rights is enacted, a draft bill (which has already been prepared) will be introduced into the Legislative Council. This (torture) bill, when enacted, will create an offence of torture and will give effect to the provisions of the Convention, supplementing existing protection under Hong Kong law against torture and other ill-treatment.

34. (See CCPR/C/58/Add.6, part III.F, para. 33.) The review of the use of judicial corporal punishment in Hong Kong has been completed. All legislation that gave the courts power to impose judicial corporal punishment has been repealed with effect from 2 November 1990.

35. The use of corporal punishment in schools is permitted in respect of male pupils, but is restricted by the Education Regulations made under the Education Ordinance. These regulations provide that corporal punishment is permitted subject to certain restrictions. It is a criminal offence for a teacher to administer corporal punishment contrary to the regulations.

36. The Education Commission has recently recommended that corporal punishment in schools in Hong Kong should be abolished. The recommendation is being considered by the Hong Kong Administration.

Article 9

37. The laws and regulations covering powers of arrest and detention in Hong Kong were described in full in the second report (CCPR/C/32/Add.14, annex, sect. F, paras. 25-44).

38. Legislation relating to powers of arrest is currently under review by the Law Reform Commission. A report with recommendations is expected in 1992.

39. The terms of reference for consideration of powers of arrest and detention by the Law Reform Commission consist of examining the existing law and practice governing the powers and duties of the police and other public officers and of private citizens relating to:

(a) Stopping, requesting proof of identity of and searching persons;

(b) Entry, search and seizure;

(c) Arrest and detention;

(d) Questioning and treatment of persons held in police custody;

(e) The release of a suspect on bail by the police and other non-judicial public officers, before charge;

(f) The disposition of seized property.

40. The Commission has also been requested to examine the rights and duties of a person stopped, questioned, detained, searched, arrested, cautioned, interrogated or charged by a police officer, a public officer or a private citizen.

41. In particular, the Commission has been asked to consider whether some or all of the provisions contained in parts I and VI, section 78, and part XI of the Police and Criminal Evidence Act 1984 and the Codes of Practice thereunder should be adopted in Hong Kong, with or without modification (see CCPR/C/58/Add.6, part III.F, paras. 108-110). The Commission has also been requested to produce a draft code relating to these matters.

42. Following its inquiry into the law relating to bail for persons charged with an offence, the Commission recommended that the existing law should be codified, and subject to certain specified conditions, a general right to bail should be created. Although the Commission has not made any recommendations as to the law relating to bail for persons who have not been charged, this will be considered by it under its reference concerning powers of arrest and detention. Instructions to draft legislation based on these recommendations are to be issued shortly.

43. The Commission completed its inquiry into the offence of "loitering" contained in section 160(1) of the Crimes Ordinance, which makes it an offence for a person to loiter in a public place and fail to give a satisfactory account of himself/herself and satisfactory explanation for his/her presence there. The Commission concluded that the loitering law was wrong in principle, was capable of abuse and that there were adequate existing powers to deal with the problem of persons behaving suspiciously in public places. The recommendations of the commission have been noted by the Administration, which prefers to await the report of the Commission on powers of arrest before considering this report further.

Court cases

44. In the period 1989-1990, there have been 43 cases in which individuals challenged the lawfulness of their detention by way of applications for habeas corpus or judicial review. Of these, the applicants have been successful in 9 cases and unsuccessful in 23 and 11 cases remain outstanding. The following paragraphs briefly describe a number of cases in which the detainees successfully challenged the legality of their detention.

45. In Liew Kar-seng (1989) 1 HKLR 607, the High Court granted habeas corpus to a person who was detained "pending his removal" to Malaysia, where, it was believed, he would be accepted. This assumption proved not to be the case and the Court held that, from the time when there was no real prospect of the authorities being able to deport him within a reasonable time, the detention was no longer "pending removal" and was therefore unlawful.

46. In Lam Yuk-kuen and Chim Lai-yui (1990) 2 HKLR 38, the High Court granted writs of habeas corpus to a woman and her two-year-old daughter who had entered Hong Kong illegally from China. The applicants had been detained pursuant to the Immigration Ordinance, purportedly for the purpose of giving evidence at the trial

of the person who had arranged their passage to Hong Kong. An application for extension of the detention was granted by the District Court without notice being given to the detainees. On the habeas corpus application, the High Court concluded that the failure to give notice rendered the further detention unlawful.

47. In Sakchai Suwannapeng (1990) 2 HKLR 231, the High Court granted a writ of habeas corpus to a person who, while on remand pending extradition proceedings, had been segregated from other prisoners. The Court held that the Prison Rules did not authorize the placing of a prisoner in solitary confinement. As a result of the case, the Administration intends to introduce a new rule, which will explicitly authorize the segregation of prisoners in circumstances where the Superintendent considers it necessary for the maintenance of prison discipline. The necessary legislative amendments are now being drafted.

Vietnamese asylum seekers (see paras. 43 and 44 TPR)

48. Since 1975, some 185,000 Vietnamese asylum seekers have arrived in Hong Kong, of whom 129,000 have so far been recognized as refugees and have been resettled in other countries. Since the introduction of the refugee status determination process in June 1988, 52,000 Vietnamese asylum seekers have arrived in Hong Kong. There are currently 52,000 Vietnamese in the camps, about 8,000 of whom have been given refugee status and permission to remain in Hong Kong pending resettlement overseas. Some 15,000 have been determined not to be refugees and have therefore been refused permission to remain, pending repatriation. A further 29,000 are waiting to have their status determined.

49. All Vietnamese arriving in Hong Kong directly from Viet Nam after 16 June 1988 are screened to determine whether they have a genuine claim to refugee status. Although the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol have not been applied to Hong Kong, the status determination procedures were designed, in conjunction with the Office of the United Nations High Commissioner for Refugees (UNHCR), to apply the criteria contained in these instruments. All new arrivals are briefed on the status determination process in Hong Kong. UNHCR assumes the responsibility for providing direct advice and assistance to asylum seekers at all stages of the status determination and review procedures. Vietnamese asylum seekers are interviewed by immigration officials using a questionnaire designed in agreement with UNHCR. A person is informed in writing of the outcome of his application for refugee status and at the same time he is advised of his right to apply for a review of an adverse decision. An independent Refugee Status Review Board headed by a former judge reviews the facts of the case and the Immigration Department's decision. Should one member of the Board find in favour of the applicant, the Director of Immigration's decision is reversed. By the end of February 1991, the Board had reviewed about 16,500 cases and reversed the decisions of the Director of Immigration in about 1,500.

50. The present status determination procedures have been refined and developed in the light of experience. Since the introduction of status determination procedures in June 1988, a number of changes have been made, in consultation with UNHCR, to streamline and improve the procedures. Considerable resources are devoted to the status determination and appeals procedures by the Hong Kong Administration. If, on completion of the procedures, UNHCR is of the opinion that a person is a

refugee, even if he or she has been screened out as a non-refugee, UNHCR may declare that person to be a refugee under its mandate and the Hong Kong Administration will then treat that person as a refugee. Out of 21,000 people so far determined by the Immigration Department and Review Board not to be refugees, UNHCR has extended its mandate to some 350.

51. It is current practice that those who are recognized as refugees (pending resettlement) are housed in open centres where there is no restriction on their movements. However, those who are waiting for their refugee status to be determined and those who have been determined not to be refugees are held in detention centres and are not in normal circumstances free to leave the centres. The policy to detain in these circumstances was introduced in 1988 to enable Hong Kong to cope with the major influx of undocumented Vietnamese asylum seekers it then faced. As a very small and very densely populated Territory, Hong Kong could not otherwise have handled with due regard to public order the arrival in large and unpredictable numbers of over 50,000 asylum seekers from Viet Nam over the next two years. A further consideration was that for Hong Kong to have relaxed its policy on detaining asylum seekers would have sent an undesirable and misleading message to those in Viet Nam who might be contemplating clandestine departure for Hong Kong. Hong Kong's difficulties were exacerbated by the huge number of arrivals in 1989, which at times reached a level of 1,000 arrivals per day. A number of temporary camps had to be set up as existing camps became overcrowded and many of the services and facilities provided were unable to operate at the levels that the Government would have wished. The living conditions in the detention centres have steadily improved as new purpose-built accommodation has become available. A new detention centre at Tai A Chau was completed in February 1991. This should help to relieve overcrowding elsewhere, and provide scope for more services and facilities and greater participation of asylum seekers in the management of their centre. Because this new centre is situated well away from the main urban areas, and thus any potential risk to public order is minimized, the Hong Kong Administration is experimenting with a new management approach for this centre. It will be managed by a non-governmental organization (NGO).

52. International and national NGOs have visited refugee camps and detention centres in Hong Kong on many occasions in the past few years. They have included Amnesty International, the Lawyers Committee for Human Rights, the Women's Commission on Refugees and the Indo-China Resource Centre, all of whom have prepared reports on various aspects of the policy and practice relating to the treatment of Vietnamese migrants in Hong Kong. These reports have contained criticisms of current law and practice. The Government has studied the reports carefully and has responded to the concerns expressed where it considered that the criticisms were well-founded and where it considered that there was a reasonable practical response to be made. For example, improvements have been made both to camp conditions and to status determination procedures.

53. At the conference on Indochinese refugees hosted by UNHCR at Geneva in June 1989, all the main resettlement countries and those of the Association of South-East Asian Nations (ASEAN) countries, as well as the United Kingdom and Hong Kong, agreed to the Comprehensive Plan of Action, which provides for the implementation of a fair and just refugee determination process. Detention of migrants pending status determination and of illegal immigrants pending

repatriation is consistent with the measures introduced by ASEAN countries faced with the same problem. A commitment to the Plan remains the cornerstone of the policies of the British and Hong Kong Governments in handling the problem of Vietnamese asylum seekers.

54. In addition to the legal advice provided by UNHCR in the status determination process, all Vietnamese asylum seekers have access to the Hong Kong legal system. Members of the private legal profession have been permitted access to detention centres in order to provide legal advice to those who wish to appeal to the Refugee Status Review Board against an initial unfavourable screening decision, or to challenge the lawfulness of their detention in proceedings before the courts. Since late 1990 volunteer lawyers of the Jesuit Refugee Service as well as lawyers of UNHCR have been providing Vietnamese asylum seekers with legal advice before they attend their status determination interview. Vietnamese asylum seekers are eligible for legal aid to bring proceedings in the courts of Hong Kong and officers of the Legal Aid Department have been given access to the centres to assist clients for this purpose.

55. In recent months, a number of cases have come before the courts in which Vietnamese asylum seekers have challenged the lawfulness of their detention or decisions refusing them permission to remain in Hong Kong as refugees.

56. One case in which the lawfulness of detention of asylum seekers was challenged (Pham Van Ngo and 110 Others (1990) HCMP 3581/90) attracted international attention. Having arrived in Hong Kong with the intention of proceeding to Japan, they were offered assistance with repairs to their boat. That offer was withdrawn and the boat destroyed when upon examination it appeared that the boat could not be made seaworthy. The High Court held that in the circumstances the 111 had not been detained lawfully under the Immigration Ordinance and expressed the view that the detention contravened article 9(1) of the Covenant. The 111 were detained after delivery of judgement, initially for examination and then as unlawful entrants, and were released on token bail within 24 hours. They have since been permitted to remain in Hong Kong as refugees pending overseas resettlement.

57. In the case of R v. Director of Immigration and Refugee Status Review Board ex parte Do Giau and others (1990) 1990MP No. 636, the hearing of applications for judicial review of decisions refusing nine asylum seekers permission to remain in Hong Kong as refugees began on 19 November 1990. On 18 February 1991, the High Court gave judgement in respect of the first applicant, quashing the decisions of both the immigration officer and the Refugee Status Review Board and remitting the case for reconsideration. Although the applicant sought a declaration of his status as a refugee in Hong Kong, the judge made no finding in this respect. The applicant also applied for a declaration that his detention was unlawful which was rejected. The Court held that the immigration officer made his decision in breach of natural justice, in that a material error of fact, which was central to the Immigration Officer's decision, was misrecorded in the record of interview. This error was not corrected on review by the Board. The Hong Kong Government is considering whether or not to recommence the status determination procedure in this case. The hearing of the remaining eight cases continues.

58. The Hong Kong Administration has spent some $HK 3.5 billion ($US 450 million) on the overall care of Vietnamese migrants between 1979/80 and 1990/91. UNHCR has since September 1988 agreed to reimburse the Administration for expenditure directly related to care and maintenance, amounting thus far to $HK 456 million ($US 58.5 million). As of January 1991, UNHCR owes the Hong Kong Administration $HK 238 million ($US 30.5 million). The cost of the refugee status determination process to the Government is estimated at $HK 75 million ($US 9.6 million) in 1990/91, and over 2,000 government employees are deployed daily on tasks related to the care of asylum seekers.

59. Between the introduction of a voluntary repatriation scheme in March 1989 and 28 February 1991, a total of 6,880 volunteers have returned to Viet Nam under the scheme. Following an agreement reached in February 1990 between the British and Vietnamese Governments on the return to Viet Nam of up to 1,000 volunteers a month as from May 1990, there was a gradual increase in the number of volunteers returning home to Viet Nam. The numbers, however, have consistently fallen well short of the 1,000 target agreed in February and are currently averaging about 400 per month.

60. In September 1990, following discussions at Hanoi, an agreement was reached between the United Kingdom, Hong Kong and Vietnamese Governments, and UNHCR, both on streamlined procedures to accelerate the voluntary repatriation programme and on the implementation of a programme to repatriate non-refugees, who, while not actively volunteering to return to Viet Nam, were nevertheless not opposed to repatriation. This new programme was, like the voluntary repatriation scheme, to be administered by UNHCR. The first flight under the new programme under which 23 people returned took place on 1 December 1990. These returnees, like those returning under the voluntary scheme, are given reintegration assistance, and UNHCR monitoring activities in Viet Nam ensure that no non-refugee returned suffers any ill-treatment or persecution.

61. A group of 51 non-refugees, who had not volunteered to return, were repatriated to Viet Nam on 12 December 1989. Under an agreement between the United Kingdom, Hong Kong and Vietnamese Governments, the group were given reintegration assistance and guarantees as to their future treatment after return. The group was visited by two members of the British Parliament in early 1990. They prepared a report on this mission in which they concluded that all 51 returnees had been properly treated by the Vietnamese authorities. The treatment of the returnees has since been monitored by the British Embassy in Hanoi.

Article 13

62. In the case of re Sit Woo-tung (1990) 2 HKLR 110, a seven-year-old boy, born and raised in Hong Kong, of an illegal immigrant mother and resident father, was ordered by the Director of Immigration to be returned to China on the ground that he did not have a right of abode in Hong Kong as the parents were considered not to have entered a bona fide marriage. The removal order against him was successfully challenged in the High Court, where it was held that he was a permanent resident in the Territory and had not practised any deception on the authorities. His mother is currently awaiting removal and the Crown is appealing against the decision.

Article 14

Paragraph 3

63. At present any person who is charged with a criminal offence before the District Court or High Court is entitled to legal aid either free or upon payment of a contribution towards his/her own costs and in the Magistrates Courts may be provided with free representation if he/she is charged with one of nine specified offences or is a juvenile appearing in a Juvenile Court.

Article 17

64. There have been a number of developments in Hong Kong with respect to this article in the Covenant, both in the areas of data protection and laws relating to privacy, both public and private.

65. Regarding data protection, the Law Reform Commission is examining the law relating to information privacy, including the relationship with the media in Hong Kong. At the same time there is a Government Working Group reviewing issues on data protection.

66. With regard to personal information and disclosure in the public and private sector, the Law Reform Commission intends to finalize a data protection model and envisage the release by autumn 1991 of a consultation document for public comment. In this connection, consideration is being given by the Commission to development of codes of practice by key sectors of datahandlers and these should be given the force of law, allowing civil redress and criminal sanctions.

67. Under its terms of reference for a review of the law relating to privacy the Law Reform Commission was requested to examine existing Hong Kong law relating to privacy and to report on whether legislative or other measures are required to provide protection against, and to provide remedies in respect of undue interference with the privacy of the individual, with particular reference to the following matters:

(a) The acquisition, collection, recording and storage of information and opinions pertaining to individuals by any persons or bodies, including government departments, public persons or corporations;

(b) The disclosure or communication of the information or opinions referred to in subparagraph (a) above to any person or body, including any government department, public body, person or corporation in or out of Hong Kong;

(c) Intrusion (by electronic or other means) into private premises;

(d) The interception of communications, whether oral or recorded.

68. However, matters that fall within the terms of reference of the Commission's study on arrest and detention or breach of confidence are excluded from this inquiry, as they are already under consideration by the Commission.

69. In its 1983 report on the law relating to homosexuality, the Law Reform Commission recommended that "the law should not impose a particular view of morality or interfere with the private lives of its citizens". The Commission recommended that the law should not criminalize sexual conduct in private by consenting adults, i.e, adult males who have reached the age of 21 years. In July 1990, a majority of the Legislative Council voted in favour of decriminalizing private homosexual acts (the vote being 31 for decriminalization, 13 against, with 6 abstentions). Amending legislation, incorporating the recommendations of the Law Reform Commission, will be introduced into the Legislative Council as soon as possible.

Article 19

70. In a particular case in 1990, several persons were prosecuted under section 4 (29) of the Summary Offences Ordinance, which makes it an offence punishable by a fine or imprisonment to use a megaphone or any other sound amplification device in a public place without first having obtained the permission of the Commissioner of Police. Their appeals against conviction were allowed. The prosecutions attracted considerable interest in Hong Kong and overseas. The Hong Kong Administration is reviewing this law to see whether there is any unnecessary duplication between it and provisions in the Public Order Ordinance (which deals with the use of sound amplication devices at meetings and processions authorized by the Commissioner of Police) and the Noise Control Ordinance (which deals with the use of sound amplification devices in public places which are a source of annoyance to members of the public).

71. Section 84(1)(m) of the Education Ordinance gave power to the Governor-in-Council to make regulations prohibiting political activities in schools. This has now been repealed and substituted by a new section that gives the Governor-in-Council power to make regulations providing for the control of the dissemination of information in schools, which is of a clearly biased political nature.

72. The powers in Education Regulations 96 and 98, giving the Director of Education powers of control over political activity in schools have also been repealed. A new provision in Education Regulation 98 enables the Director of Education to give guidance in writing to schools to prevent the dissemination of information of a clearly biased political nature. The intention is to encourage the proper teaching of civic education in schools.

73. Education Regulation 92 has also been amended so as to remove from schools the duty to submit syllabuses and textbook lists for the approval of the Director of Education. The Director retains the power to request information regarding a school's syllabus and textbooks, and to give directions in writing requiring a syllabus to be amended or forbidding use of a textbook. These powers will be exercised on educational grounds only.

74. Section 2 of the Official Secrets Act 1911 has been repealed in the United Kingdom by the Official Secrets Act 1989 (see CCPR/C/58/Add.6, part III.F, paras. 256 and 257). The Official Secrets Act 1989 was not applied to Hong Kong and section 2 of the 1911 Act remains in force in the territory. The Secretary for Security told the Legislative Council in November 1990 that the Hong Kong Government is considering whether the 1989 Act should be applied to Hong Kong.

Article 21

75. A detailed explanation was provided in the third report (see CCPR/C/58/Add.6, part III.F, paras. 61-76) as to the discretionary powers of the Commissioner of Police, and how they are exercised within the framework of the Public Order Ordinance.

76. The following updates the figures in the third report (see CCPR/C/58/Add.6, part III.F, para. 68), which indicate the manner in which the Commissioner of Police has exercised his discretion to prohibit a public meeting or to refuse to license a procession.

	1984	1985	1986	1987	1988	1989	1990
No. of public notified meetings	38	108	82	92	176	207	365
Disallowed under section 9	1	2	1	3	3	2	4
Public processions licences sought	31	83	169	172	199	290	272
Licences refused	4	1	4	2	5	3	4

Article 23

77. Section 18 of the Marriage Ordinance has been amended. The age at which a male or female can marry is 16 years. Parental consent is required if the person intending to marry is under 21 years of age. Until the enactment of the Age of Majority (Related Provisions) Ordinance in 1990, a person under the age of 21 years who had been refused consent to marry by a parent or guardian could not marry. The Marriage Ordinance as amended now provides that, where consent has been withheld by a parent or guardian, the person affected can ask a District Court Judge to consent to the marriage and his consent shall have the same effect as if it had been by the person whose consent is refused.

Article 24

78. The Law Reform Commission is currently examining questions of illegitimacy with a view to improving the situation of illegitimate children, particularly related to the right of succession.

79. The terms of reference consist of a consideration of the law relating to legitimation and illegitimate persons, having particular regard to the provisions of the International Covenant on Civil and Political Rights, and to recommend such changes in the law as may be thought necessary.

80. The Law Reform Commission is also considering issues of guardianship and custody, by examining the provisions of the Guardianship of Minors Ordinance, chapter 13, and to recommend such changes as may be appropriate.

81. In January 1990, a Working Party was set up by the Hong Kong Administration to conduct a review of social welfare services and to draft a White Paper setting out the future direction of social welfare development in Hong Kong. The White Paper was published in September 1990 for public consultation. The Administration is considering the responses.

82. In response to an increased need for day care facilities for young children who cannot be cared for by their parents during the day, the White Paper proposes to further expand day care places, to adopt more flexible approach to the provision of the service through the introduction of more flexible hours, occasional child care and the encouragement of more work-based centres and to improve financial assistance to those families who are in social need.

83. The White Paper suggests that future development of residential child care providing supervision and care for vulnerable children and young persons who cannot be adequately looked after by their families should give preference to non-institutional care in the form of foster homes and small group homes which is better than institutional care. In addition, the White Paper also proposes to give families on Public Assistance a Child Supplement, in addition to the child's existing entitlements as a family member, to help towards the extra costs of the food and recreation which every child needs for healthy development.

84. In recent years, there has been an increase in reported incidents of children left unattended, neglected or abused. Increased publicity and public education have attempted to identify and prevent these problems. Statutory provisions for handling child abuse are being amended to accord greater protection to children. In addition, legislative measures to prohibit unsuitable persons from serving as childminders or children being left unattended are under consideration.

Article 25

85. A review of the decisions of the 1988 White Paper on the development of representative government was concluded in March 1990. The Hong Kong Administration recognized the widely held view in the community that there should be a faster rate of political development in 1991 than previously envisaged and, in particular, that the number of directly elected seats in the Legislative Council should be increased.

86. On 21 March 1990 the Chief Secretary announced in the Legislative Council that the number of directly elected seats of the Legislative Council in 1991 would be 18 (almost double the 10 seats which had been previously envisaged) and the number of elected seats from functional constituencies comprising the major social, economic and professional groups in Hong Kong would also be increased to 21 from 14. The number of appointed members and official members would be reduced respectively from 20 to 18 and from 10 to the 3 ex officio members, viz the Chief Secretary, Financial Secretary and Attorney General. In October 1991 the 60-member Legislative Council will for the first time have a majority of members who have been elected at direct elections or by the functional constituencies.

87. People in Hong Kong are encouraged to take part in the conduct of public affairs, to vote and to be elected at elections. In order to maintain the political neutrality of the civil service, and to ensure that government business is, and is seen to be, conducted impartially, some restrictions have been imposed on the political activities of civil servants.

88. These restrictions do not (save only in the cases of members of disciplined services) affect the right of individual employees to join a political organization. The current restrictions do, however, limit the nature and the degree of participation by some civil servants in a political organization. The civil servants who are affected are mainly involved in the formulation of government policy. For the same reason, civil servants are disqualified from seeking candidature and election to District Boards, the Municipal Councils and the Legislative Council.

Article 26

89. The Hong Kong Administration is reviewing all its legislation to ensure that it complies with this article. In this context the following should be noted:

(a) The application of the Convention on the Elimination of All Forms of Discrimination against Women to Hong Kong is still under consideration.

(b) A bill, passed by the Legislative Council in July 1989, which, inter alia, altered the basis of taxing salaries of married couples from aggregation to separate taxation, came into operation on 1 April 1990 (as referred to in CCPR/C/58/Add.6, part III.F, para. 27).

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1989

Addendum

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND*

[22 March 1991]

SUPPLEMENTARY REPORTS TO THE THIRD PERIODIC REPORT BY THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND TO THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 40, INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

THIRD PERIODIC REPORT BY THE STATES OF JERSEY UNDER ARTICLE 40, INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

THIRD PERIODIC REPORT BY THE STATES OF GUERNSEY UNDER ARTICLE 40, INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

THIRD PERIODIC REPORT BY THE STATES OF THE ISLE OF MAN GOVERNMENT UNDER ARTICLE 40, INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

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* This document contains supplementary information submitted by the United Kingdom to its third periodic report contained in document CCPR/C/58/Add.6.

SUPPLEMENTARY REPORTS TO THE THIRD REPORTS

In October 1989, the United Kingdom of Great Britain and Northern Ireland, the States of Jersey, the States of Guernsey and the Isle of Man Government submitted third periodic reports to the Human Rights Committee under Article 40 of the International Covenant on Civil and Political Rights (CCPR/C/58/Add.6). These supplementary reports contain details of new legislation regulations and other developments since those reports were completed.

A. UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Article 2

Ethnic minorities

1. In Great Britain the ethnic minority population now numbers some 2.6 million, which is 4.7 per cent of the total population. The main ethnic groups are as follows:

West Indian	495 000
African	112 000
Indian	787 000
Pakistani	428 000
Bangladeshi	108 000
Chinese	125 000

2. Following successful testing of an ethnic group question for the 1991 census, the Government has decided that this question will be included for the first time in the census. There has been widespread consultation on the proposal to include the question and on the form it should take. Whilst it is clear that no single form of question will satisfy everyone, the question to be used does represent a broad consensus of opinion and has the support of the Commission for Racial Equality. It will ask people to indicate, by ticking the appropriate box, whether they are:

White

Black - Caribbean

Black - other (please describe)

Indian

Pakistani

Bangladeshi

Chinese

Any other ethnic group (please describe)

3. Information about individuals will not be available from the census results. The answers will be treated in strict confidence and only be used for the purposes of producing statistics. Names and addresses will not be entered into the computer, only postcodes. The forms will be kept in the Registrar General's office and treated as confidential for 100 years.

Ethnic minorities and the criminal justice system

4. In September 1990 among the male prison population of England and Wales, 82 per cent were white; 10.5 per cent were of Afro-Caribbean origin; and 3 per cent were of Asian origin. Among the female population, 66 per cent were white; 23 per cent were of Afro-Caribbean origin; and 2 per cent were of Asian origin.

5. A new prison service race relations manual is being introduced in April 1991. It amplifies the race relations policies and provides assistance to establishments in determining shortcomings in the implementation of those policies and in drawing up an action plan to improve their performance. Associated with the manual is a training pack to be delivered locally. Staff will also be given a pocketbook summarizing the race relations policies.

6. The Metropolitan Police and other police forces have written statements of their race relations policies, and a national policy statement on quality of service to all members of the public has been drawn up by the Association of Chief Police Officers.

Commission for Racial Equality

7. In 1989, 1,307 individual applications for assistance following alleged discrimination were registered with the Commission, of which 904 were employment-related, 377 arose in areas other than employment and 26 were outside the scope of the Race Relations Act. In the same year, the Commission's Complaints Committee, which considers each application registered, dealt with 982 employment-related cases and 415 non-employment cases. Of these, the Committee decided that 240 complaints should not receive any assistance, 865 should receive no further assistance, and 180 should be helped with legal representation. One hundred and twelve cases were withdrawn. In 1989, of the cases supported by the Commission (which include some pre-1989 cases) 33 were successful after hearing, 82 were settled on agreed terms and 49 were dismissed after hearing.

Northern Ireland - Political and religious discrimination in employment

8. The major report on fair employment of the Independent Standing Advisory Commission on Human Rights was published in 1987. The Government accepted most of its recommendations, which were important in shaping the Fair Employment (Northern Ireland) Act, 1989. A second major report, entitled "Religious and Political Discrimination and Equality of Opportunity in Northern Ireland", was published in 1990. The Government is considering its response to the many detailed recommendations.

9. In 1989, legislation was passed to strengthen the existing law on religious discrimination in employment in Northern Ireland. Under the Fair Employment (Northern Ireland) Act, 1989, the Fair Employment Agency is replaced with a new Fair Employment Commission, with increased staff and financial resources and with wide powers of investigation and inquiry. The Act also established a Fair Employment Tribunal, which adjudicates on individual cases of alleged religious discrimination and enforces directions of the Commission. Indirect discrimination has also been made illegal. New obligations are imposed on public and private sector employers. The former are deemed to be registered and the latter must register with the Commission, monitor the religious composition of their workforce (and, in some cases, their applicants) and submit annual returns to the Commission. Failure to register, or to submit returns, are amongst a series of criminal offences attracting substantial fines.

10. A new code of practice has been published to show employers how to implement good practice. The code guides employers in reviewing their own employment practices, and will be drawn on by the Commission is auditing employers' practices and progress. It will also inform the Fair Employment Tribunal's decisions when enforcing the legislation.

11. Furthermore, an employer in breach of an order of compliance of the Fair Employment Tribunal may receive a monetary penalty of up to £30,000. Any employer who is in breach of his obligations under the new Act may not be considered for public sector contracts and will not be eligible for Government grants. The Government is now working to ensure speedy and effective implementation of the Act and is confident that substantial progress will be made towards the eradication of religious discrimination in employment in Northern Ireland.

12. The Fair Employment Commission has expressed its satisfaction with the way employers have cooperated to date both by registering with the Commission and in making monitoring returns within the prescribed period. At 29 January 1991, 1,874 employers had registered and over 99 per cent of monitoring returns had been properly made. To date there have been 14 convictions for failure to submit a monitoring return within the due time.

13. Given the high priority that the Government attaches to the achievement of fair employment, the new Act will be both evaluated and reviewed. Evaluation will proceed through regular meetings between the chairman of the new Commission and the appropriate government minister. Review will be undertaken by a high status central policy unit - the Central Community Relations Unit. It will report directly to the Secretary of State and it will consult with interested parties in conducting the review of the Act.

Article 3

Sex discrimination

14. The United Kingdom Government remains fully committed to the principle of equality of opportunity between women and men.

15. In Great Britain, the Sex Discrimination Act, 1975 (as amended by the Sex Discrimination Act, 1986, the Sex Discrimination and Equal Pay (Offshore Employment) Order, 1987 and the Employment Act, 1989) makes it generally unlawful to discriminate in the fields of employment, education and training, the provision of goods, facilities and services, and in the disposal and management of premises. The Equal Pay Act, 1970 (as amended by the Equal Pay (Amendment) Regulations, 1983) makes it generally unlawful to discriminate between men and women in pay and terms and conditions of employment. The equivalent legislation in Northern Ireland was recently supplemented by the Employment (Miscellaneous Provisions) Northern Ireland Order, 1990.

16. As described in the third periodic report, the publicly funded Equal Opportunities Commissions in Great Britain and Northern Ireland continue to play a vital role in helping to combat sex discrimination and promote equality of opportunity between the sexes.

17. The Equal Opportunities Commissions of Great Britain and Northern Ireland both have a statutory duty periodically to review the Sex Discrimination and Equal Pay Acts and to advise the Government of any changes the Commissions consider necessary. The Equal Opportunities Commission of Great Britain issued, in March 1989, a consultation document called "Equal Pay ... Making It Work" which considered various options intended to simplify procedures and increase the impact of the legislation. Following consultations, the Equal Opportunities Commission of Great Britain submitted in November 1990 its formal proposals "Equal Pay for Men and Women: Strengthening the Acts" to the Government. The Equal Opportunities Commission of Northern Ireland equivalent publication is "The Equal Pay Legislation: Recommendations for Change". Their proposals are under consideration.

Article 4

Derogations

18. On 14 November 1989, the Home Secretary made the following statement to Parliament:

> "The European Court of Human Rights held in the case of Brogan and others that the detention of the four applicants under section 12 of the Prevention of Terrorism (Temporary Provisions) Act, 1984 (now sect. 14 of the Act of 1989) constituted a breach of article 5 (3) of the European Convention on Human Rights because none of the applicants was brought promptly before a judicial authority. Under section 14 a person who is arrested on reasonable suspicion of involvement in acts of terrorism may be held by the police for a maximum of 48 hours during which period the necessity of continued detention must be reviewed regularly by a senior police officer not involved in the investigation. The Secretary of State may then extend that period of detention up to a maximum of a further five days before that person must either be released, or must be charged or excluded from a part or whole of the United Kingdom. Since the court delivered its judgement on 29 November 1988 the Government has been considering whether it would be

possible to introduce a judicial element in the procedure for authorizing extensions of detention in a way which would be compatible with the provisions of the Convention and which would not weaken the effectiveness of its response to terrorism.

"The Government believes that in the context of the continued threat to the United Kingdom, on a scale unknown elsewhere in Europe, posed by terrorism connected with the affairs of Northern Ireland the power to hold terrorist suspects for a period of up to seven days is essential. The continued necessity for this power - and the other powers in the Prevention of Terrorism Act - is reviewed annually by both Houses of Parliament.

"Decisions to authorize the detention of terrorist suspects for periods beyond 48 hours may be, and often are, taken on the basis of information, the nature and source of which could not be revealed to a suspect or his legal adviser without serious risk to individuals assisting the police or the prospect of further valuable intelligence being lost. Any new procedure which avoided those dangers by allowing a court to make a decision on information not presented to the detainee or his legal adviser would represent a radical departure from the principles which govern judicial proceedings in this country and could seriously affect public trust and confidence in the independence of the judiciary. The Government would be most reluctant to introduce any new procedure which could have this effect.

"The Government further believes that the present arrangements represent reasonable safeguards for the detained person. They guarantee to the suspect an early review of the continued need for his detention, provide that any extension of that detention beyond two days must be authorized by the Secretary of State, and that he must be released, charged or excluded within a maximum of seven days from his arrest.

"The Government has concluded that a satisfactory procedure for the review of detention of terrorist suspects involving the judiciary has not been identified. The derogation notified on 23 December 1988 under article 15 of the European Convention on Human Rights and article 4 of the International Covenant on Civil and Political Rights must and will therefore remain in place for as long as circumstances require. The derogation is limited to the powers under the Prevention of Terrorism (Temporary Provisions) Act, 1989 to detain for up to seven days those suspected of involvement in the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland."

Article 6

Capital punishment

19. A further parliamentary debate took place in the House of Commons on 17 December 1990. In accordance with the policies of successive Governments, members of the House of Commons voted freely and the Government collectively

remained neutral. Reintroduction of capital punishment for murder was defeated by 367 votes to 182. Proposals to reintroduce capital punishment for specific categories of murder were defeated by majorities of between 135 and 163.

Article 7

20. As explained in the third periodic report, sections 47 and 48 of the Education (No. 2) Act, 1986 and an order in council for Northern Ireland abolished the use of corporal punishment in State-maintained schools. The law also exempts from corporal punishment pupils at independent schools in England and Wales whose fees are met by central government or a local authority.

21. Under the Children Act, 1989, most independent boarding schools with 50 or fewer boarders will be required to register as children's homes. The Government intends shortly to make regulations banning the use of corporal punishment in such homes. These regulations will have the effect of totally banning corporal punishment in some 10 per cent of independent schools.

22. After the passage of the Education (No. 2) Act, 1986, a number of applications to the European Commission of Human Rights that had arisen from the use of corporal punishment in State-maintained schools remained outstanding. The Government offered the applicants ex gratia payments on condition that they withdrew their applications. These offers were accepted. In January 1991, the European Commission of Human Rights decided that two applications relating to corporal punishment in private schools were admissible.

Article 9

"Police and Criminal Evidence Act 1984 - England and Wales"

23. The third periodic report described the principal police powers and safeguards for the suspect contained in the Police and Criminal Evidence Act, 1984 (PACE) and the first four Codes of Practice made under the Act. Both the Act and the Codes came into force on 1 January 1986.

24. In 1988, in accordance with an undertaking given to Parliament, the four Codes were completely revised after a long period of consultation with all the interested agencies. The new Codes come into effect on 1 April 1991. They will significantly strengthen the protection afforded to the suspect, in particular the provisions for access to legal advice, and for advising the suspect of his rights. The main changes from the existing Codes are:

(a) Stop and search for offensive weapons and other property. Voluntary searches in public may continue but the police should make it clear to those whom they stop that they are asking them to cooperate voluntarily in a search. This will better inform people of their rights and prevent the voluntary search from being used as a means of evading PACE controls over compulsory stops and searches;

(b) Entry and search of premises. The police officer conducting a search of premises is required, in addition to showing a search warrant, to give the owner a notice setting out police powers of search and his own rights;

(c) Detention, treatmert and questioning of persons. More information about access to legal advice will be given to persons in custody:

(i) A suspect will be clearly advised of his right to legal advice, and that it is free;

(ii) Posters advertising the right to free legal advice will be displayed in all charging areas;

(iii) The police will be prohibited from dissuading the suspect from exercising his right to legal advice;

(iv) The suspect will be reminded of his right to legal advice prior to any interview or resumed interview, detention, review, intimate search or identity parade;

(d) Interview records will be shown to all suspects, wherever they are held, to enable suspects to check and agree them;

(e) Whilst in custody suspects will receive, in addition to the notice setting out basic legal rights, a notice of entitlements covering visits, standards of physical comfort, access to toilets and washing facilities, clothing, medical attention and exercise;

(f) There will be restriction on the circumstances in which interviewing can take place away from the police station;

(g) Identification of persons. Witnesses will be able to identify suspects from a video film instead of in person, subject to certain safeguards, including giving the suspect and his solicitor a chance to see the complete film before it is shown to a witness.

25. A fifth Code of Practice, covering the tape recording of interviews with suspects, was approved by Parliament in 1988. Some police forces had already started to introduce tape recording within their areas, as part of a five-year rolling programme, and tape recording will become standard practice in all forces by the end of 1991. The Code provides strict safeguards for the integrity of the tape, a copy of which is always made available to the defence. The master copy is sealed in the presence of the suspect and may not be opened again prior to the court hearing, save in the most exceptional circumstances.

26. Interviews with suspects who are held under the Prevention of Terrorism (Temporary Provisions) Act, 1989 are, however, either excluded from, or not covered by, this fifth Code of Practice. A two-year experiment of tape recording interviews with terrorist suspects began in March 1990, but no conclusions have yet been drawn from this experiment.

27. The introduction of tape recording is widely seen as a major step forward in safeguarding the quality of evidence obtained in interviews. Tape recorded evidence is never challenged for accuracy. The police, courts, lawyers and defendants strongly support it.

28. Some police forces are eager to progress to video recordings of interviews with suspects. Three are doing so on a trial basis, and this is being evaluated on behalf of the forces concerned and the Home Office.

Police powers in Northern Ireland

29. The powers of the police and army in Northern Ireland in relation to terrorist related crime were explained in the third periodic report. The Northern Ireland (Emergency Provisions) Bill, which is currently being considered by Parliament, will re-enact with some amendments the existing Acts, which expire in 1992. In particular, the Bill will:

(a) Create a new offence of "possession of items intended for terrorist purposes" and of directing the activities of a terrorist organization, and new powers to facilitate the investigation of the financing of terrorism;

(b) Allow the Secretary of State to make codes of practice governing the exercise of the emergency powers by the police and Army, and the treatment of suspects in custody;

(c) Establish an independent assessor to oversee the existing system for complaints against the army.

Article 10

Prisons

30. A government White Paper, "Crime, Justice and Protecting the Public" was published in February 1990. The White Paper set out the Government's proposals for a coherent and statutory framework for sentencing and for changes to the arrangements for early release in response to the recommendations in the report of the Review Committee on the Parole System in England and Wales published in November 1988.

31. A criminal justice bill implementing proposals in the White Paper was introduced into the House of Commons on 8 November 1990. The bill introduces a statutory framework for sentencing to ensure that offenders are punished justly and suitably according to the seriousness of their offence. The provisions include restrictions on imposing custodial sentences and expand the number of community penalties available. The aim is for less serious offenders - particularly property offenders - to be dealt with by a wider and more flexible range of strengthened community penalties. On the other hand, offenders who commit very serious - particularly violent and sexual - crimes can continue to expect to receive long custodial sentences.

32. As explained in the third periodic report, the parole system in England and Wales was reviewed by a committee established under the chairmanship of Lord Carlisle of Bucklow. The Committee reported in November 1988. The Government published its response to the Carlisle Committee's recommendations on the reform of the parole and remission schemes in February 1990 in its White Paper entitled "Crime, Justice and Protecting the Public". The recommendations were largely accepted and, after a period of consultation, details of a new system of early release were included in the 1990/91 criminal justice bill. The bill sets out two new systems of early release, based upon sentence length. Common to both schemes is the abolition of remission, the requirement that all inmates should spend at least half of their sentences in custody and the creation of a liability of recall to prison for re-offending before the sentence fully expires. All inmates will still be released from custody before the end of their sentences, but all young offenders and all adults serving terms of 12 months or more will be supervised by the probation service on release until three quarters of their sentence has expired.

33. Inmates serving less than four years will be released automatically after serving half of their sentences. There will be no selection process. Those serving four years or more will become eligible for parole at the half-way point of sentence and, as now, will have their cases considered by the Parole Board. However, if parole is not granted, they will nevertheless still be released automatically at the two thirds point of sentence. The Secretary of State will retain the final say in the release on parole of all long-term inmates, although he intends to delegate this responsibility to the Parole Board for inmates serving sentences of less than seven years.

34. Although remission will be abolished, release could be delayed by additional days to be served in custody for misconduct. These would automatically put back an inmates' release eligibility and supervision expiry dates, but could not extend the original sentence. They effectively replace the present sanction of loss of remission.

35. It is intended to introduce the new early release scheme during 1992. However, it will only be applied to inmates sentenced after the implementation date. There will be no retrospective application of the scheme to existing inmates who will keep their current entitlements of consideration for parole after one third of their sentences and automatic and unconditional release, with remission, after two thirds.

36. In September 1990, a substantial reform of the procedures by which prisoners in England and Wales may make requests or complaints was implemented. Under the new system:

(a) All requests/complaints should receive a reasoned written response within time limits (seven days in the majority of cases);

(b) Prisoners may make written requests or complaints to the governor, to the chairman of the board of visitors or to the area manager (the governor's line manager) under sealed cover. The procedure guarantees confidential access, but it is for the recipient to decide how best to respond to the request/complaint;

(c) There is a right of appeal (normally to the area manager) against decisions made by the governor. Again, reasoned written responses must be supplied within time limits (six weeks);

(d) Governors are required to hear oral applications every day. The governor in charge may delegate this responsibility to more junior governors in the establishment;

(e) On matters outside the governor's competence (for instance, affecting parole decisions, or appeals against disciplinary hearings) prisoners' requests/complaints are handled by the responsible divisions within Prison Service Headquarters.

37. Prisoners' rights to raise their concerns with individuals or groups outside the Prison Service are entirely unaffected by these reforms.

Secure accommodation for children - England and Wales

38. The Child Care Act, 1980 is due to be repealed in October 1991 when the Children Act 1989 comes into force. The provision and use of secure accommodation will then be governed by section 25 of the Children Act. New regulations made under the Children Act will replace the two sets of regulations made under the Child Care Act, 1980.

39. The main effects of the changes made in the primary legislation, and the regulations made under it, will be as follows:

(a) Local authorities will be under a duty to take reasonable steps designed, inter alia, to avoid the need for children within their areas to be placed in secure accommodation;

(b) No child under the age of 13 years will be able to be placed by a local authority in secure accommodation without the prior approval of the Secretary of State for Health to the placement [at present, the Secretary of State need only approve individual placements for children under 10 years of age];

(c) The provision of secure accommodation in voluntary homes and (private) registered children's homes will be forbidden;

(d) The provision of secure accommodation in certain establishments outside the child care system will be brought within the scope of the legislation and regulations governing secure accommodation. The establishments concerned are those provided by health or local education authorities; and residential care, nursing and mental nursing homes.

40. Of the above measures, (a) is designed, as stated, to avoid the placement of children in secure accommodation if at all possible; (b) restricts the age-range of children who can be placed in secure accommodation without specific approval of the placement by the Secretary of State (in addition to the need for authorization by a court); (c) restricts the range of child care establishments in which a child can

be placed in secure accommodation; and (d) makes it clear that children held in secure accommodation in various establishments outside the child care system are protected by the secure accommodation legislation and regulations.

Access to prison regulations

41. In England and Wales, prison standing orders are being published in a continuous programme, which is expected to be completed by spring 1991. Once published they are placed in libraries and can be bought by prisoners. Standing orders on the following subjects have been published for the first time:

(a) Reception procedures;

(b) Prisoners' property and cash;

(c) Discharge of prisoners;

(d) Bail, recognizances and discontinuance of proceedings;

(e) Offences, adjudications and punishments;

(f) Management of violent or refractory prisoners;

(g) Work and pay;

(h) Religion;

(i) Education, training and libraries;

(j) Temporary release and escorted absence;

(k) Unsentenced prisoners;

(l) Release on licence and recall;

(m) Appellants;

(n) Health and safety;

(o) Police and security matters.

Prison conditions

42. The Government has maintained its commitment to ending overcrowding in prisons in England and Wales. In addition to the 8 new establishments already opened, 13 are under construction which, together with the additions to existing prisons, should provide some 9,500 new places in the next four years. In 1991/92, the number of places available should match the number of inmates nationally, although there will still be localized overcrowding. With the downturn in the prison population over the last year it has been decided not to commence work at the

present time on the last seven new prisons in the original prison building programme, with resources being diverted to improving existing prisons, particularly kitchens and sanitation facilities.

43. The government is committed to ending slopping out. Since 1989 the programme for installing access to night sanitation has been accelerated. On current plans 60 per cent of all prison places will have access to night sanitation by April 1991 and over 80 per cent will have access by April 1994. Providing similar facilities for the remaining places is a high priority, and ways are being considered to achieve this as soon as possible without adding to problems of overcrowding.

44. In April 1990, the Home Secretary asked Lord Justice Woolf to inquire into the prison disturbances that took place in England and Wales during that month. His report (CM1456) was presented to Parliament in February 1991.

Article 12

Entry

45. Since the third periodic report, the United Kingdom has created a new avenue to British citizenship for Hong Kong. The British Nationality (Hong Kong) Act, 1990, which received Royal Assent on 26 July 1990, enables the Secretary of State to register as British citizens up to 50,000 key people (together with their spouses and existing minor children) recommended for that purpose by the Governor of Hong Kong. The aim of the measure is to help maintain Hong Kong's economic prosperity and social stability in the run-up to 1997. High rates of emigration, particularly amongst those in the professional, managerial and technical classes, are posing significant problems and have reduced confidence in the territory.

Restriction orders: prevention of football hooliganism

46. Part II of the Football Spectators Act, 1989 introduced restriction orders that enable courts to impose orders intended to prevent certain offenders convicted of "football-related offences" from attending designated matches outside England and Wales by requiring them to report to a police station in England or Wales on such occasions. "Football-related" offences are broadly committed at a designated match or on a journey to or from such a match involving breaches of public order or contravention of alcohol restrictions. Failure to report is a criminal offence.

47. The court may not make the order unless it is satisfied that doing so would help to prevent violence or disorder at, or in connection with, designated matches.

48. The 1989 Act also provides for restriction orders to be made in respect of "corresponding offences" committed outside England and Wales subject to bilateral agreements with individual countries. This power has been available since 1 June 1990 in respect of offences committed in Italy and Scotland; it is intended that similar agreements should be reached speedily with other members of the Union of European Football Associations (UEFA) (including Sweden, hosts of the forthcoming European Championships). The restriction is not a general prohibition on foreign travel by the persons concerned.

49. These arrangements are designed to ensure that there are sufficient controls to prevent convicted hooligans from going abroad to create mischief at football matches and to provide a deterrent to potential troublemakers.

50. The restriction order provisions are administered by the Football Spectators Restriction Orders Authority (ROA). In accordance with section 21 (1) of the Act, the Secretary of State issued guidance to ROA on the discharge of its functions.

51. The main functions of ROA are:

(a) To maintain a record of those individuals subject to restriction orders;

(b) To issue notices requiring individuals to report during a period of time, which would prevent attendance at a specific foreign match;

(c) To consider and decide on requests for exemption from reporting.

52. Section 20 (1) of the Act provides for any person subject to an order to seek an exemption from the duty to report on the occasion of a football match or series of football matches. ROA considers and decides on such requests.

53. The authority is required to grant an exemption if the person shows, to its satisfaction, that there are special circumstances that justify exemption and that because of those circumstances he would not attend the match if exempted.

54. The person may appeal to a magistrates' court following a refusal to grant an exemption from the duty to report.

55. Between 24 April 1990, when the provisions came into force, and 1 January 1991, ROA had been notified of 19 restriction orders. Of those, 17 arose from convictions in connection with disorders at Bournemouth in May 1990. The low number of orders made to date in part reflects that these provisions only came into force towards the end of the last football season.

Article 14

Time-limits

56. Only London and eight counties in the south-east of England and now outside the overall limits described in the third periodic report and planning is continuing with the Crown Prosecution Service, the Lord Chancellor's Department, and the police for the extension of limits to these areas later this year. The exceptional committal limit in the West Midlands will also be brought into line with other areas.

57. The operation of the custody limits also described in the third periodic report is being monitored and results so far now suggest that about 5 per cent of cases exceed the limit. The continuing progress in the West Midlands shows that significant improvements are possible. It is probably true that time-limits are directly affecting only a relatively small number of cases. However, they have created a disciplined framework and established the presumption that delays will not be tolerated. The reasons for delays in the criminal justice process are complex and the introduction and extension of custody time-limits is only one of a number of initiatives directed at reducing delay. The problem, which is clearly recognized as a priority, is being tackled jointly by the three criminal justice departments (Home Office, the Lord Chancellor's Department and the Crown Prosecution Service).

Article 17

Data protection

58. In 1990 an inter-departmental committee recommended improvements to subject access and replacement of registration by a system of declarations by data users. However, action on this has been suspended while the Government considers draft data protection measures tabled by the Commission of the European Communities.

Evidence in court obtained by infringing privacy

59. The third periodic report explains the position as far as the law in England and Wales is concerned. In Scotland, the legal position in this regard is governed entirely by common law. In criminal cases, evidence illegally or irregularly obtained is inadmissible unless the illegality or irregularity associated with its procurement can be excused by the court. Particular rules apply regarding confessions. A confession obtained by police from a suspect will be admissible in evidence unless it can be affirmed that it has been extracted from him by unfair means. Once an accused has been charged, any statement made by him is inadmissible unless it is voluntary and spontaneous.

60. In Northern Ireland in common law, evidence is admissible if it is relevant to the issue, and the court is not concerned with how it was obtained. Case law shows that evidence may be admissible even though it has been stolen, or obtained by illegal search, eavesdropping, private telephone tapping, secret tape recording and by intercepting an unposted letter. This is because, despite the circumstances in

which it was obtained, its relevance to the issue to be determined by the court may be such that, were it to be excluded for that reason, justice would not be done. However, by virtue of article 76 of the Police and Criminal Evidence (Northern Ireland) Order 1989 a court can refuse to allow police evidence which would have an adverse effect on the fairness of the proceedings. The article makes explicit reference to the circumstances in which the evidence was obtained. Also, under section 8 of the Northern Ireland (Emergency Provisions) Act, 1978, the court should not allow a statement to be given in evidence if there is prima facie evidence adduced that the accused was subjected to torture, to inhuman or degrading treatment, or to any violence or threat of violence (whether or not amounting to torture) in order to induce him to make a statement and the prosecution does not satisfy the court that the statement was not so obtained.

Article 18

61. The Employment Act 1989 amended the Race Relations Act 1976 by:

(a) Widening section 13 which concerns discrimination in the provision of training for employment, to cover any person who provides or makes arrangements for such training. It also extended those provisions to include discrimination during the course of training (instead of just at access to or termination from it);

(b) Amending the positive action provisions of section 37. As amended, section 37 allows any person (including employers) to restrict training to members of a particular racial group when it will fit members of that group for particular work in which they are underrepresented (previously only training bodies designated by the Secretary of State for Employment could do this). The requirement to obtain designation has also been removed but the underrepresentation and particular work criteria of the sections remain. These changes provide employers with much greater scope to take positive action. The amendment brings the Race Relations Act 1976 into line with similar provisions in the Sex Discrimination Act 1975, as amended by the Sex Discrimination Act 1986;

(c) Exempting turban-wearing Sikhs from any legal requirement to wear a safety helmet on a construction site (The Construction (Head Protection) Regulations 1989).

62. The first two of these provisions came into force on 16 January 1990, and the third on 16 November 1989.

Religious education in schools

63. Reforms introduced in Northern Ireland in 1989 empowered the Northern Ireland Education Department to specify a core syllabus for the teaching of religious education and arrangements are in hand to have this core syllabus prepared.

Article 19

Blasphemy

64. The third periodic report explained the law in England and Wales. In Scotland blasphemy is historically a common law crime that relates to the Christian religion (not to a specific established church as in England). There have been no prosecutions for blasphemy for 150 years, and it is thought that the law has therefore fallen into disuse in Scotland. Unlike in England and Wales, there have been no recent moves to review the law of blasphemy in Scotland.

Obscenity

65. The third periodic report explained the law in England and Wales. In Scotland obscenity is a crime at common law and under statute in the Civic Government (Scotland) Act 1982. Under the law in Scotland the courts are not tied to a statutory definition of what is obscene, but the question of whether material is judged to be indecent or obscene is a question of fact for the court to decide in each case on the basis of the evidence. The Government is not aware of unsatisfactory results being produced by the law on obscenity in Scotland and has no plans to change it.

Broadcasting

66. The Broadcasting Act 1990 received Royal Assent on 1 November 1990. Under it the former broadcasting authorities - the Independent Broadcasting Authority (IBA) and the Cable Authority - have been replaced by an Independent Television Commission (ITC) and a Radio Authority. The ITC will allocate licences for commercial television at the national, regional and local level, including broadcasting by satellite. It will have powers to enforce a range of licence conditions covering programme content and quality. The Radio Authority will operate on broadly similar lines. The regulatory functions of the British Broadcasting Commission (BBC) and the Welsh Fourth Channel will remain largely unchanged.

67. The 1990 Act maintained the Broadcasting Complaints Commission and also established the Broadcasting Standards Council on a statutory basis. Its functions are to prepare a code of practice on the portrayal of sex, violence, taste and decency in broadcasting; and in respect of these subjects to monitor programmes, examine complaints and publicize the findings, undertake research and publish an annual report. Broadcasting has also been brought within the scope of the Obscene Publications Act, 1959.

68. As explained in the third periodic report, in October 1988, under powers given to him through the Broadcasting Act 1981 and the BBC's Royal Charter and Licence, the Home Secretary issued directions to the BBC and IBA to refrain from broadcasting statements by representatives of Northern Ireland terrorist organizations and their supporters. The Government's decision has since been upheld in the Divisional Court, the Court of Appeal and the House of Lords. The powers available to the Government to issue such directions have been continued in the Broadcasting Act 1990.

The press

69. As also explained in the third periodic report, an important element in the protection of human rights in the United Kingdom is the long tradition of press freedom. It has, in general, the same freedom as the individual, to impart ideas and information. No specific laws govern the press, though the law on, for example, contempt of court, official secrets, libel and defamation, and breach of confidence restricts what it may report. On the subject of judicial proceedings, the press may not publish material likely to prejudice the courts' reputation for fairness before or during proceedings, nor may it publish before or during a trial, matter which might tend to influence the result or destroy the purpose of proceedings. A particular example concerned the interim injunction against certain British newspapers pending the hearing of proceedings instituted by the Attorney General for breach of confidence in respect of the publications of extracts from the book "Spycatcher".

70. Regulation of content and the handling of complaints have been carried out by the industry itself. In 1989, two private members' bills proposed statutory rights of reply and protection of privacy. Because of their implications for press freedom and its preference for self-regulation the Government did not support these bills and they did not complete their parliamentary passage.

71. However, in response to the public and parliamentary disquiet which had been expressed about the activities of some sections of the press, particularly in intruding into citizens' privacy, it set up an independent committee under Mr. David Calcutt QC to review privacy and related matters. The Government accepted in principle its main recommendations for replacement of the Press Council by a Press Complaints Commission, and for criminal offences of unjustified invasion of privacy for publication purposes. It made clear that it would review the Commission after 18 months operation to see if it was effectively regulating the industry and, if it was not, it would introduce statutory regulations.

72. The newspaper industry set up the Press Complaints Commission on 1 January 1991.

Article 22

Trades unions

73. On 31 December 1990 there were 323 listed trades unions.

Membership/non-membership of a trade union

74. Sections 1-3 of the Employment Act, 1990, which came into force on 1 January 1991, provide a remedy for individuals who are denied access to employment on grounds of their union membership or non-membership. The provisions make it unlawful for an employer to refuse to employ a person because that person is, or is not, a member of a trade union; or because he or she refuses to become, or ceases to be, a member. A person who believes that he or she has been refused employment for such a reason can present a complaint to an industrial tribunal

which, if it declares the complaint to be well founded, may award compensation and/or make a recommendation that the employer takes particular remedial action.

75. The provisions also make it unlawful for an employment agency to refuse any of its services to a person because that person is, or is not, a member of a trade union; or because he or she refuses to become, or ceases to be, a member. A person who believes that he or she has been refused a service of an employment agency for such a reason can present a complaint to an industrial tribunal which, if it declares the complaint to be well founded, may award compensation and/or make a recommendation that the employment agency takes particular remedial action.

76. The maximum compensation payable for refusal of employment or a service of an employment agency is currently £8,925 (which is the same as in cases of refusal to employ on grounds of race or sex).

Trades union membership and activities

77. In 1989 and 1990, the International Labour Organisation (ILO) Committee of Experts made certain observations about other issues relating to United Kingdom compliance with the guarantees afforded by ILO Convention 87. While agreeing that there was no incompatibility between the Convention and various provisions of the 1988 Employment Act (for example, as these apply to the election of union officers, access to the courts for members who have a grievance against their union, and ballots in respect of industrial action), the Committee questioned whether other provisions of that Act, and of United Kingdom law, were compatible with guarantees afforded by the Convention.

78. The Trades Union Congress (TUC) withdrew the complaints it had made to ILO after the Committee of Experts' 1989 observations, and before these matters could be considered by the ILO Committee on Freedom of Association. However, the United Kingdom Government's "Article 22" report on compliance with that Convention in the period July 1988-June 1990 responded to the Committee of Experts' 1989 and 1990 observations. In summary, and in response to those observations, the United Kingdom Government:

(a) Confirmed its belief that nothing in United Kingdom legislation is incompatible with the guarantees afforded by ILO Convention 87;

(b) Asserted that trade union members should have protection under the law against unjustifiable disciplinary action by their union - for example where such discipline is imposed because of a member's refusal to take industrial action;

(c) Noted that United Kingdom law prevents a court, in any circumstances, from ordering a striking employee to honour his contract of employment and return to work - thus confirming an effective, and universal, freedom to strike for employees;

(d) Drew attention to the special protection available in United Kingdom law for the organization of industrial action where such action is in contemplation or furtherance of a trade dispute between workers and their own employer;

(e) Indicated that United Kingdom industrial relations practice means that collective agreements made by unions with employers impose no kind of contractual obligations on such unions, which is a fundamental difference between United Kingdom practice and that which applies in many other countries;

(f) Explained that guidance about various aspects of industrial relations and trades union law is available in free booklets issued by the Employment Department, and that these are updated to take account of changes to the law from time to time.

Article 24

Children Act, 1989

79. The proposals on the public and private law relating to children mentioned in the third periodic report formed the basis for the major new legislation which received Royal Assent in November 1989. The Children Act brings together in a single statute both the private and public law on the care and upbringing of children. When implemented in full in October 1991 it will represent a major revision and clarification of the law relating to children and family services. Nine Acts of Parliament will be repealed including the Children Act, 1975 and the Children and Young Persons (Amendment) Act, 1986 referred to below.

80. The overriding purpose of the Act is to promote and safeguard the welfare of children. The concept of parental responsibility is introduced as a fundamental principle and defined in the Act as a collection of rights, powers, duties and responsibilities which follow from being a parent and raising a child. The state will be expected to take a pro-active role in helping families with children in need to discharge that responsibility and only to intervene compulsorily where children are placed at unacceptable risk. Local authority care and social services for children should therefore be seen in this context.

81. Part I of the Act sets out the key proposition that the child's welfare is to be the paramount consideration where court decisions are taken concerning a child's upbringing. This legislation will not affect adoption legislation which provides for the child's interests to be the first consideration. The paramountcy principle will apply as equally to local authority care proceedings and emergency protection proceedings as it does to disputes between parents. There is a general principle that delay should be minimized in any proceedings and the Act prohibits the court from making an order unless it is satisfied that the order will positively contribute to the child's welfare. Part II introduces a range of new and flexible private law orders relating to children. These focus on the child's interest so as to resolve specific areas of dispute. These orders will be made principally in private family proceedings but can be made in proceedings in which local authority care or supervision of a child is involved.

82. Part III sets out the responsibilities of local authorities towards children and their families. The children include children in need and disabled children, children under five and children in the care of the local authority. A general duty is placed on the local authority to safeguard and promote the welfare of children in its area who are in need and to promote the upbringing of such children

by their own families. An emphasis is placed on enabling children in need to remain with their family wherever possible, and on the prevention of family breakdown. The general duty is to be discharged by the provision of a range of services which may be provided with the voluntary agreement of the parents. These include day care for children under five who are in need (although authorities are also empowered to provide day-care services for children who are not in need).

83. Accommodation is to be provided for certain categories of children, such as those who are lost or who have been abandoned, either with foster parents or in a children's home and may also be provided for other children in need with the agreement of their parents. Other services include the provision of home helps and assistance for disabled children as well as advice, guidance and social work support.

84. Part IV relates to care and supervision orders made by courts concerning children. The grounds for making a care order are rationalized and the basis for statutory intervention is directed towards the occurrence or likely occurrence of significant harm. A child can only be taken into local authority care in civil proceedings. When a care order is made, parental responsibility is shared between the parents and the local authority. The Act ensures that contact between parents and children continues when a child is in care as long as it is not detrimental to the interests of the child.

85. Part V covers the protection of children at risk and their removal from home where this is in the child's best interests. The Act establishes a system of checks and balances so as to ensure that effective protective action can be taken whilst affording adequate safeguards and opportunities for those actions to be challenged before the courts. Children at risk of significant harm may be made the subject of an emergency protection order. A child assessment order is introduced to enable an assessment of the child in non-emergency circumstances if this is necessary to decide on the likelihood of significant harm. Both orders are short-term and time-limited. Authorities are required to investigate cases thoroughly, and other authorities may be required to provide assistance in this task.

Northern Ireland

86. In Northern Ireland the civil law relating to children and their families is in the process of being revised. The new legislation, which is expected to become law in 1992 and to come into operation at the end of 1993, will bring together the private and public law on the care, upbringing and protection of children in a single civil code along the lines of the Children Act, 1989.

Other legislation on children

87. The Children Act, 1989 enhances the role of the guardian ad litem described in the third periodic report by extending it to a wider range of proceedings and requiring that a guardian ad litem should be appointed at an early stage in these proceedings. This should enable the guardian ad litem to play a full and active role, not only as a representative and spokesperson for the child, but in advising the Court on procedural matters connected with the child's welfare. In Northern

Ireland, the proposed new children legislation will include similar provisions for the appointment of guardians ad litem in a wide range of care and care-related proceedings.

88. The 1988 Education Reform Act established a National Curriculum which will apply to all pupils from 5 to 16 years of age in maintained schools. This will ensure that all pupils receive a broad and balanced education which is relevant to their needs. The National Curriculum subjects are English, mathematics, science, technology, a modern foreign language, history, geography, art, music and physical education. With limited exceptions, these will apply throughout the 5 to 16 years age range. Introduction of the national curriculum commenced in 1989 and the requirements for each subject are being phased in gradually. It is expected that the national curriculum will be fully in place by 1997.

89. The Government intends to introduce legislation in 1991 to establish a new system of child maintenance. It is intended that child maintenance will be assessed by a formula approach, removing the inconsistencies that could occur under the previous, discretionary system. A new government agency is to be set up, both to assess maintenance liability and to ensure that payments are made. As a result of the new system, it is anticipated that more absent parents will make a realistic contribution to the cost of their child's maintenance.

Adoption

90. The present framework for adoption in England and Wales was described in the third periodic report: adoption continues to be governed by the Adoption Act, 1976 and by regulations and rules of court. A major review of adoption law has, however, commenced in order to take account of developments in recent years in adoption practice and changes in related legislation (such as the Children Act, 1989). The first in a series of discussion papers was issued in September 1990, with further papers to follow in 1991. Wide consultation is taking place on all proposals so as to consider the views and interests of all parties to adoption - the natural parents, adoptive parents and the children concerned.

91. In Northern Ireland, the law on adoption is contained in the Adoption (Northern Ireland) Order, 1987 and in regulations and rules of court made under that Order, and is broadly similar to the law in Great Britain. The Department of Health and Social Services for Northern Ireland will consider the implications for Northern Ireland adoption law of any changes to the law in England and Wales which might be proposed as a result of the review referred to above.

Other matters

92. The criminal justice bill currently before Parliament will implement, with modifications, the recommendations of the "Pigot" report. These changes to the law will ease the stress and burden of criminal proceedings for children in cases of child abuse, ensure that their story is more easily heard and that their assailants are more easily brought to book. The principal change is the proposal to allow a child's evidence-in-chief to be given, subject to the leave of the court, as a video recording of an earlier investigative interview. Cross-examination is retained thus preserving a fundamental right of the accused but this should be via

a live television link with the child in a room separate from the court, thus avoiding the need for direct confrontation with the accused.

93. Some of the provisions in the Children and Young Persons (Amendment) Act, 1986 described in the third periodic report have been assimilated by the Children Act, and will be repealed when the Children Act is implemented. However, grandparents are not specifically mentioned now although they, and indeed any relative, may be able to apply for party status if they fall within certain categories. Also, under the Children Act all parties have a general right of appeal to the High Court and not the Crown Court, thereby reinforcing the civil nature of these proceedings.

Services for children in the care of local authorities

94. The third periodic report described the introduction in 1988 of new regulations and guidance to govern the placement of children in local authority care who are fostered. The 1988 regulations and guidance are being updated in the light of the Children Act, 1989.

95. Boarding out and fostering in Scotland is regulated by the Boarding Out and Fostering of Children (Scotland) Regulations, 1985 which apply to the action of a local authority or voluntary organization under the Social Work (Scotland) Act, 1968. In Northern Ireland boarding out and fostering continues to be governed by the Children and Young Persons (Boarding Out) (Northern Ireland) Regulations, 1976, but these will be updated when the new children legislation referred to above comes into operation.

Under fives/day care

96. The Department of Health has continued to sponsor various initiatives to develop day-care services for children and families in the community. Between 1983 and 1987 the first Under Fives Initiative enabled 15 voluntary bodies to set up and run almost 100 projects to help families with young children. The Government also set up a small grants scheme in 1987/88 to give six national voluntary organizations a lump sum, which they distributed in the form of small capital grants to local groups providing services for under fives and their families. A seventh organization was added in 1988. The scheme will continue until 1993/94. Over £1 million was spent between 1987/88 and 1990/91 and thousands of local groups have benefited. The Department also ran a self-help and families project as part of its Helping the Community to Care Initiative for three years from October 1986.

97. A new Under Fives Initiative was announced by Ministers on 22 September 1989 with £2 million being provided over the next three years to explore four policy areas of day care:

(a) Day care and support services for families with young children living in temporary accommodation to gain a better understanding of their situation and how they can help themselves use statutory services such as child health surveillance;

(b) Ways of improving the working partnership between local authorities and voluntary bodies;

(c) Day care services targeted on children of lone parents to improve our knowledge about their effect on their economic situation;

(d) Ways of supporting people looking after young children either in the child's home, other domestic setting or day nursery to improve knowledge about quality of care.

98. The Children Act, 1989, which will come into operation in October 1991, is a comprehensive piece of legislation about children, drawing together and simplifying existing legislation. It is a more practical and consistent code and strikes a new balance between family autonomy and the protection of children.

99. Long-standing government policy is that public provision of day care (i.e., services provided or funded by local authorities) should be targeted on those whose need for it is the greatest - e.g., families with particular health or social needs who will benefit most from a local authority day-care place. Until now local authorities have not been under a duty to provide day-care services for children in need but the Children Act introduces a new general duty to do this for children in need in their area who are aged under five and not yet attending school and for school age children in need outside school hours and during school holidays.

100. A local authority has discretion to provide training, advice, guidance, counselling and other facilities for those who care for children in day care or who accompany children while they are in day care. This power enables local authorities to support child-care workers and parents and thereby raise standards.

101. The Act requires each local authority to review (together with the appropriate local education authority) the provision of day care and other services described above and to publish a report. The Act introduces a new registration system to regulate private and voluntary day-care services and child-minding. The new legislation will be simpler to operate and easier to enforce and the registration authority (the local authority) will be able to use it to encourage higher standards of service. The process of review involves also taking account of educational facilities and services in establishments such as children's homes which are not required to register. The first review must be carried out within one year of the Act coming into force and subsequent reviews must be undertaken every three years.

102. The Department of Health continues to support the child-care voluntary sector because of its substantial contribution to the variety and quality of child-care services in this country. Total grant aid of about £1 million per annum is given to 11 national voluntary organizations to help them with their core costs. Local authorities will also continue to have power to give grants.

Article 25

Civil service

103. Reference was made in the third periodic report to the position with regard to the civil service as an equal opportunities employer. The United Kingdom civil service has a policy of equality of opportunity. This provides that all eligible people, no matter what their sex or marital status, race, colour, nationality or ethnic or national origin, shall have equality of opportunity for employment and advancement on the basis of their ability, qualifications, and fitness for the work. There must be no discrimination, whether direct or indirect, against any eligible person in recruitment, training, promotion or any other way.

Local government officers

104. The Bill referred to on the third periodic report passed into law as the Local Government and Housing Act, 1989. Sections 1-3 of this measure:

(a) Disqualify the senior officers of the main local authorities from being elected as members of Parliament, the European Parliament or any of these authorities (previously, they have been eligible for all except their employer);

(b) Make a prohibition on certain forms of public political activity a condition of employment of those senior officers in the same way as has applied to senior civil servants for over a century.

The senior officers concerned are those who:

(a) Regularly advise the elected members of the authorities, or

(b) Regularly speak to the media on behalf of the authorities.

105. In the case of those paid at more than a specified level (currently just under £21,500 a year) the assumption is made (subject to the appeal described below) that one or other of these conditions is fulfilled. Below that level it is for each authority to determine which staff are affected. Anyone affected may apply to an independent adjudicator for a direction that the restrictions shall not apply, on the grounds that in fact neither of the conditions is fulfilled.

106. The purpose of this legislation is to give statutory force to the previous convention that senior local government staff do not take an active part in politics. This approach, like the similar rules restricting senior civil servants' public political activity, is seen as necessary to safeguard the public's right to politically impartial support and service to the elected local authorities.

Women in public life

Public bodies and the civil service

107. In 1990, 23.3 per cent of public appointments were held by women, compared with 19 per cent in 1987. Some 48 per cent of staff in the civil service are women. In 1984, a programme of action to achieve equality of opportunity for women in the civil service was adopted. This has led to the adoption of a wide range of initiatives designed, like the programme for action on race, to help departments and agencies recruit, retain and develop the best available people. Initiatives already introduced include flexible working patterns, child care for preschool and school age children, and review and revision of the recruitment and promotion processes to remove barriers to women's progress. There are still proportionately more women than men at lower grades, but it is clear that the measures introduced under the 1984 programme of action are having the intended effect. The proportion of women at the executive officer level rose from 29 per cent in 1984 to 40 per cent in 1990 and by early 1990 the proportion of women recruited in the administrative fast stream entry competition had risen to 43 per cent, from 29 per cent in 1983. Women's resignation rates have dropped significantly, from 74 per cent of all resignations in 1983 to 61 per cent in 1989.

Article 27

Main indigenous minority languages

Welsh

108. The Welsh Language Board published voluntary guidelines concerning the use of Welsh within the public sector in 1989. In response to these guidelines a number of local authorities and government departments operating in Wales have developed policies which set out the way in which they can apply the guidelines to their particular circumstances.

109. The Secretary of State for Wales has announced that direct financial support for the Welsh language in 1991/92 will be a record £6.8 million, an increase of almost £1 million on the provision for 1990/91.

Gaelic

110. The Government is continuing to ensure that the Gaelic language in Scotland is increasingly protected and developed. In 1990-1991, government funding of Gaelic organizations totals £305,000, with a further £1.2 million payable to Scottish local authorities under the specific grant scheme for Gaelic education. This scheme was introduced in 1986/87 and has been an outstanding success, with an increasing variety of projects including the preparation of a Gaelic database, and the development of initiatives in community education and the arts. Under the scheme the number of Gaelic-medium primary units in schools increased in 1990 to 25. The Government has recently announced that it will provide £9.5 million per annum to increase the production of television programmes in the Gaelic language from the present level of 100 hours to about 300 hours each year.

Irish

111. The Government's overall policy is to recognize and respect the cultural identities and traditions of both sides of the community in Northern Ireland. The Government recognizes the special importance of the Irish language, particularly to the minority community, and encourages interest in and appreciation of the language and the contribution it has made to the cultural heritage of the whole community.

112. Within this policy, the Government is prepared to respond, where practical, to soundly based requests for assistance for Irish language activities. Government spending on Irish language or language-related programmes in 1989/90, excluding mainline education programmes, amounted to some £670,000. In addition, a new independent Irish language body, the Ultach Trust, has been offered up to £259,000 towards its capital fund.

B. STATES OF JERSEY

Article 3

113. The States of Jersey has approved a Proposition endorsing the principle that all forms of discrimination on grounds of sex, whether against women or men, should be removed. A special committee has been set up to investigate the present situation and to make such recommendations to the States as it thinks appropriate to achieve that aim.

Article 7

114. The draft law creating the statutory offence of torture has been passed by the States of Jersey and sanctioned by Her Majesty the Queen in Council.

C. STATES OF GUERNSEY

Article 4

115. With effect from 1 January 1991, the United Kingdom Prevention of Terrorism Legislation has been replaced by domestic legislation in the form of the Prevention of Terrorism (Guernsey) Law, 1990 which mirrors the United Kingdom legislation with regard to detention and exclusion, but makes special provision to meet the different legal systems of the Islands of the Bailiwick of Guernsey with regard to confiscation of the proceeds of terrorism.

Article 7

116. The Projet de Loi entitled the Administration of Justice (Bailiwick of Guernsey) Law, 1990 approved by the States of Guernsey on 27 September 1990 and presently awaiting Royal Sanction, creates a specific offence of torture.

Article 10

117. The new prison has been completed and has been in use since December 1989. The Parole Review Committee (Guernsey) Law, 1988 referred to in the last report has been enacted and brought into force. An implementation ordinance was approved by the States on 31 December 1990.

118. The Juvenile Court (Guernsey) Law, 1988 came into force on 1 October 1990. The Juvenile Court (Criminal Cases) (Rules) 1990 relating to the procedure in the Juvenile Court were enacted on 1 October 1990 and replaced the Magistrates' Courts (Juvenile Cases) (Procedure) Rules, 1985.

Article 12

119. The Housing (Control of Occupation) (Guernsey) Law, 1982 has been further amended by the Housing (Control of Occupation) (Amendment) (Guernsey) Law, 1990 following the enactment of new legislation entitled the Right to Work (Limitation and Proof) (Guernsey) Law, 1990. The Right to Work Law requires a person taking up employment in Guernsey to hold a document confirming his residential status under the Housing (Control of Occupation) Legislation. The right to work legislation came into force on 1 December 1990.

Article 25

120. On 31 January 1991, the States of Guernsey resolved to direct the preparation of legislation to amend the Constitution of the States of Deliberation (the Island's Legislature). The effect of these changes will be:

(a) With effect from 1 April 1991, the 12 Conseillers who currently hold office for a six-year term and are elected by an electoral college will be replaced by 12 additional People's Deputies. The seats will be distributed amongst the existing constituencies on a population basis;

(b) The term of office for People's Deputy will be increased from three years to four years with effect from 1 April 1994.

D. ISLE OF MAN GOVERNMENT

Article 1

121. Under the Council of Ministers Act, 1990 the Ministers are now appointed by the Lieutenant Governor on the nomination of the Chief Minister (rather than the nomination of Tynwald). Under the Constitution Act, 1990 the Lieutenant Governor has ceased to preside over the Court of Tynwald (the joint sitting of the Legislative Council and the House of Keys).

Article 22

122. New employment and trades union legislation is at present being considered by the House of Keys and Legislative Council.